Filed 4/7/09 In re E.L. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.L., A Person Coming Under the Juvenile Court Law.	B208824 (Los Angeles County Superior Ct. No. PJ41102)
THE PEOPLE, Plaintiff and Respondent, v. E.L., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Fred J. Fujioka, Judge. Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Minor appellant challenges the decision of the juvenile court sustaining a Welfare and Institutions Code section 602 petition against him on the ground that insufficient evidence supported the juvenile court's finding he committed battery on a school employee. He also argues one of his probation conditions is vague and overbroad. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

School employee Jonathan Orellano was asked to escort appellant from a classroom to the dean's office. Orellano and appellant knew each other from prior contacts at the school. As Orellano approached the classroom, he saw appellant walking in "the quad." Orellano directed appellant to come with him. As they walked to the office, appellant cursed Orellano and challenged him to a fight. After they arrived in the office and waited for the dean, appellant continued to curse at Orellano.

Appellant wanted to leave the office, but Orellano directed him to wait. Appellant ran out of the door. Orellano grabbed appellant's shirt, but appellant pulled away and walked back to the quad, which was about 50 to 70 feet away from the office. Orellano followed. In the quad, appellant challenged Orellano to a fight. Orellano refused. Appellant responded by twice shoving Orellano in the chest.

Mark Hayes, who was a part-time dean and part-time physical education teacher at the school, saw Orellano speaking with appellant. He then saw appellant shove Orellano once in the chest. Hayes did not see Orellano touch appellant.

Appellant testified Orellano and a student in the dean's office were "talking smack" to him. Appellant left the office to avoid getting into a fight. As he did so, Orellano grabbed appellant's shirt. Appellant threatened to push Orellano if he pulled appellant again. When Orellano again attempted to pull appellant back into the office, appellant pushed Orellano away.

The juvenile court found true the allegation appellant committed battery on a school employee and sustained the petition. The court declared appellant to be a ward of the court and ordered him placed home on probation, subject to a variety of conditions.

DISCUSSION

1. Sufficiency of evidence

Appellant contends the evidence was insufficient to support the juvenile court's finding that he committed a battery on a school employee. He argues that Orellano was acting outside the scope of his duties when he grabbed appellant's shirt, and appellant therefore did not batter a school employee engaged in the performance of his duties, as required by Penal Code section 243.6.[1]

The same standard governs review of the sufficiency of evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138; *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.)

Appellant bases his claim on Hayes's testimony that school staff members were not permitted to restrain a student who was simply walking away. However, even if Orellano acted improperly when he grabbed appellant's shirt, the testimony of both Orellano and Hayes demonstrated that appellant's conduct occurred after he succeeded in slipping away from Orellano's grasp and walked a number of feet away to the quad. At

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[1] Penal Code section 243.6 provides, in pertinent part, as follows: "When a battery is committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both the fine and imprisonment."

that time, Orellano did not touch appellant, but simply spoke to him to attempt to persuade him to return to the dean's office. The juvenile court clearly rejected appellant's contradictory testimony that the shove occurred just outside the dean's office, while Orellano was grabbing appellant's shirt. Accordingly, even if Orellano briefly deviated from performing his duties when he grabbed appellant's shirt, the trier of fact could reasonably have found that Orellano had resumed performance of his duties when appellant committed the battery. Appellant's sufficiency of evidence claim therefore has no merit.

2. Probation condition No. 12

Condition No. 12 of appellant's probation provided as follows: "Do not be within one block of any school ground unless enrolled, attending classes, on approved school business, or with school official, parent or guardian."

Citing *In re Sheena K.* (2007) 40 Cal.4th 875 (*Sheena K.*), appellant contends that this condition is unconstitutionally vague because it does not include as an element appellant's knowledge of the presence or proximity of the school. However, applying the vagueness analysis of *Sheena K.*, we conclude that the condition at issue here passes muster.

In *Sheena K.*, the Court noted that "the underpinning of a vagueness challenge is the due process concept of 'fair warning.'" (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The Court analogized to the vagueness test used for statutes: "'[t]he vagueness doctrine 'bars enforcement of "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."' [Citation.] A vague law 'not only fails to provide adequate notice to those who must observe its strictures, but also "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." [Citation.]' [*Ibid*.]" In short, "a probation condition 'must be sufficiently precise for the probationer

to know what is required of him, and for the court to determine whether the condition has been violated.'" (*Ibid.*)

The probation condition at issue in *Sheena K.* was that the minor not associate with anyone "disapproved of by probation." (*Sheena K.*, *supra*, 40 Cal.4th at p. 878.) The California Supreme Court found this condition unconstitutionally vague in the absence of an express requirement of knowledge because the condition "did not notify defendant in advance with whom she might not associate through any reference to persons whom defendant knew to be disapproved of by her probation officer." (*Id.* at pp. 891-892.)

The probation condition appellant challenges, however, does not suffer from vagueness. It specifies the precise conduct appellant must avoid: placing himself at a location within one block of any school ground unless he is present pursuant to one of the purposes specified in the condition or is accompanied by one of the specified persons. The wording of the condition is not such as to require persons of common intelligence to guess at its meaning or differ as to its application. Nor does the condition create a potential for arbitrary and discriminatory enforcement. By reference to the common meanings ascribed to "block" and "school," the condition sets forth an objective standard governing both appellant's conduct and a determination of whether appellant's conduct violated the condition. Moreover, Penal Code section 626, subdivision (a)(4) defines "school" as "any public or private elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, or technical school or any public right-of-way situated immediately adjacent to school property or any other place if a teacher and one or more pupils are required to be at that place in connection with assigned school activities." The condition places a burden upon appellant to determine whether his route or destination would bring him within one block of a school, but this does not make the condition vague. Appellant will be able to make the determination on his own, by reference to maps and other objectively ascertainable matters, and act accordingly. The condition does not establish "an inherently imprecise

and subjective standard." (*People v. Turner* (2007) 155 Cal.App.4th 1432, 1436 [condition prohibiting possession of sexually oriented or stimulating material held impermissibly vague].)

Appellant's condition is therefore distinguishable from the condition in issue in *Sheena K.*, which provided the probationer with inadequate advance notification of the identity of persons with whom she must not associate. Unless the probation officer specifically identified the persons of whom he or she disapproved, Sheena K. had no means of determining whether association with any particular person would cause her to violate her probation. Sheena K.'s condition also created a risk of arbitrary and discriminatory application because the existence of a violation rested exclusively in the mind of her probation officer. Unlike the subjective disapproval of a probation officer, the presence of a school is objectively verifiable by reference to a map or by observing objective physical indicia, such as signs designating a facility as a school, "school zone" speed limit signs, and/or the presence of a combination of facilities typically found at schools, such as playgrounds, athletic fields, and a flag pole near buildings. Moreover, the locations of schools are fixed and relatively quite static. Although new schools may open and existing schools may close, this process is neither commonplace nor readily achieved without notice or the placement or removal of some of the objective indicia previously mentioned. In contrast, the category of persons disapproved by a probation officer is potentially quite fluid and could enlarge in an instant, without notice to the probationer. Other probation conditions held to be unconstitutionally vague similarly suffer from comparable variability and lack of objective indicia, e.g., conditions prohibiting association with gang members (*In re Justin S.* (2001) 93 Cal.App.4th 811), narcotics users or sellers (*People v. Garcia* (1993) 19 Cal.App.4th 97), or felons (*ibid.*) and a condition prohibiting a probationer from going to places where gang members congregate (*In re Vincent G.* (2008) 162 Cal.App.4th 238). Unlike a school building, which occupies a fixed location and is typically denoted by objective indicia such as signs, etc., gang meeting points potentially move from one site to another and would be

objectively ascertainable, if at all, only when gang members were present. For all of these reasons, we conclude appellant's probation condition is distinguishable from the types of conditions deemed unconstitutionally vague in *Sheena K.* and earlier cases.

Moreover, if appellant is charged with a probation violation for being within a block of a school without permission, an authorized purpose, or a school official, parent or guardian, he will be entitled to a hearing to determine whether he willfully violated his probation. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 982.)

Appellant further contends that, without a knowledge element, the condition is overbroad because it restricts his rights of association and travel. "A probation condition is constitutionally overbroad when it substantially limits a person's rights and those limitations are not closely tailored to the purpose of the condition." (*People v. Harrisson* (2005) 134 Cal.App.4th 637, 641.) A minor's liberty interest is not co-extensive with that of an adult. (*In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242 (*Frank V.*).) Furthermore, a juvenile court has significantly greater discretion in imposing conditions of probation than that exercised by an adult court when sentencing an adult to probation. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) This is because juvenile probation is not an act of leniency, but a disposition made in the minor's best interest. (*Ibid*.) Accordingly, "a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court." (*Ibid.*) When the state asserts jurisdiction over a minor, it stands in the shoes of his or her parents, and a parent may curtail a child's exercise of his or her constitutional rights. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) Accordingly, courts have upheld against overbreadth challenges a probation condition restricting a minor residing in Orange County from travelling to Los Angeles County unless accompanied by a parent or with prior permission from his probation officer (*id.* at pp. 940-942 [right of travel]) and a probation condition prohibiting a minor from associating with people of whom his probation officer or parents disapprove (*Frank V.*, *supra*, 233 Cal.App.3d at p. 1243 [right of association]). Because the sustained petition was based upon appellant's assaultive

conduct against school personnel on school grounds, the condition in issue serves the dual purposes of rehabilitation and public safety by attempting to prevent a recurrence of appellant's misconduct through restricting his presence on and near school grounds to instances in which he has a legitimate purpose for being there. Furthermore, appellant has no right to enter the grounds of any school in which he is not enrolled during school hours without authorization. (Pen. Code, § 627.2.) Notably, appellant's condition includes a "safety valve" permitting him to be on or near school grounds when accompanied by a school official, parent or guardian. We conclude the condition does not "sweep unnecessarily broadly and thereby invade the area of protected freedoms." (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 577.) Moreover, adding a knowledge element would not reduce the effect upon appellant's associational and travel rights, but would simply negate his implicit affirmative duty to ascertain whether a school exists within one block of any place he goes.

Accordingly, because it is neither vague nor overbroad, condition No. 12 does not require modification.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

TUCKER, J.*

We concur:

MALLANO, P. J.

ROTHSCHILD, J.

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*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.